No. 59.

Brief of Johnson Pro Se.

Filed Jan. 9, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
JESSE JOHNSON.
} No. 59.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR JOHNSON.

JESSE JOHNSON,
Appearing in Person.

Eagle Print, Brooklyn-New York

Supreme Court

OF THE UNITED STATES.

The United States,
Plaintiff in error,

against

Jesse Johnson,
Defendant in error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This cause comes before this Court on a certificate from the Circuit Court of Appeals for the Second Circuit, asking instruction of this Court upon three questions of law, arising on the facts stated in the certificate.

The three questions of law are as follows:

1. Is said Johnson entitled to be paid by the Government of the United States the said sum of six thousand five hundred dollars for the services rendered as aforesaid in the year 1892?

The foregoing question is submitted without reference to the provisions of Section 835 of the Revised Statutes, which are referred to in the questions following.

If the foregoing question is answered in the affirmative, then there is presented the further question—

2. Is such compensation to be included in the fees and emoluments of claimant's office within the provisions of Sections 834, 835, and 844 of the Revised Statutes?

If both of the above questions are answered in the affimative, then there is presented the further question—

3. Can the Government of the United States, under the circumstances here stated, convey and apply the said sixty-five hundred dollars as such sum was conveyed and applied as aforesaid on account of the payments made by the United States as herein stated for services rendered in the year 1891?

Generally stated the facts are as follows:

Johnson, the defendant in error, was District Attorney of the United States for the Eastern District of New York. While holding that position he was employed and directed by the United States to acquire by condemnation, for fortification purposes (for

a mortar battery), certain lands situated in that district (folio 2).

The certificate states:

> "Such employment was made as follows: At the special written request of the Secretary of War, the Attorney General instructed said Johnson, in writing, to institute such proceedings on behalf of the United States for the condemnation of such lands; with such written instruction he enclosed a copy of such request from the Secretary of War, and stated that he acted agreeably thereto."

In order to condemn it was necessary to ascertain the title to such lands (fol. 4).

In the year 1892, Johnson properly ascertained the title to all such lands, and instituted and carried through the condemnation proceedings; the services so rendered by him were worth six thousand five hundred dollars, and a bill for that amount was duly approved and allowed by the Attorney General (fol. 4). Thereupon the financial and accounting officers of the Government so proceeded that a warrant for that amount was drawn on funds appropriated for the War Department, and conveyed into the treasury of the United States in repayment of an alleged over-payment to Johnson (fol. 6).

The right to so convey and apply such sum $6,500 was claimed by the Government, because for similar services rendered in the previous year (1891) it had paid him more than the maximum of $6,000 fixed by section 835 of the Revised Statutes (fol. 6). No claim

is made that he had been paid for such previous services any sum in excess of their fair value or beyond what the proper officers of the Government had duly audited and allowed therefor.

The amount which had been paid him for services rendered in the year 1891 does not appear; but the record contains a stipulation to the effect that *if* his (Johnson's) compensation for such services rendered in the year 1891 was limited to the maximum provided by Section 835, then the over-payment to him for the year 1891 was equal to the amount so charged against him and here in suit, that is, was equal to $6,500 (fol. 7).

As the defendant in error understands, the Government defends on these two propositions:

First—That the services so rendered by Johnson were a part of his official duties as District Attorney, and that for that reason he can have no compensation therefor except his salary ($200 per annum, § 770 Revised Statutes), or such sums [trifling in amount] as are taxable under the fee bill; that, at any rate, he cannot recover on the basis of value, and a recognition and allowance by the Attorney General.

Second—That if he could otherwise recover on the basis of value, the compensation for these services, as well as for similar services in the previous year, are a part of "the fees and emoluments of his office," limited to $6,000, by Section 835; and that the over-

payment appearing on that basis for 1891 was properly liquidated by the appropriation of his earnings for the year 1892.

The consideration of the first defense involves an answer to the first question certified to this Court.

The consideration of the second defense involves a consideration of the second and third questions so certified.

POINTS.

FIRST PART.

Apart from the provisions of Section 835 of the Revised Statutes—the section fixing the maximum of $6,000—the defendant in error was entitled to recover.

In other words, the first question should be answered in the affirmative.

I.

The previous proceedings in this case indicate that counsel for both parties are practically agreed that the vital question is:—Are there, or are there not, provisions of statute law which imposed on Johnson as an official the duty or obligation to render these services,—to do so for his salary, or such compensation as might be taxed under the fee bill

The fair discussion of this question seems to impose on counsel for the Government the burden of pointing out the statutes which they claim have that effect. Accepting that burden, they have presented to the Court Sections 355, 770, 771, 823, 1764, 1765, of the Revised Statutes, and Section 3, Chapter 158 of the Laws of 1874,—all of which are printed as an addender to this brief.

A provision contained in the Sundry Civil Appropriation Act for 1889 (25 Stat. 941) was at one time cited on the same point, but now seems to be abandoned. Its provisions were all dependent upon the "*grantor*" providing and furnishing full abstracts and searches, and hence could have no relation to a proceding to condemn, a proceeding against an unwilling and resisting owner.

Besides it was limited to sites for *public buildings*, which are quite different from the two or three hundred acres required for the "mortar batteries" necessary to defend New York City.

Probably, from that statute, under the rule *expressio unius exclusio alterius*, a fair argument could be drawn in favor of this defendant. He, however, hopes to convince the Court that his claim is dependent on inferences and conclusions much more apparent and certain.

II.

The services here in question were rendered under the authority of special provisions of statute law, the more essential

portions of which are quoted in the certificate (folios 2 and 3)

The provision there quoted—*much later in date than any of the statutes cited for the Government*—are complete in themselves, and would have been effective if every law passed by Congress—except the laws constituting the office of Secretary of War, and for revenue and disbursement—had been repealed.

NOT ONLY DO THEY FAIL TO IMPOSE ON THE DISTRICT ATTORNEY THE OBLIGATION HERE IN QUESTION, BUT BY SCOPE AND OBVIOUS INTENDMENT, AND ALMOST BY LETTER, THEY REPEL SUCH A PRESUMPTION, CLEARLY INDICATING THAT THE SERVICES WERE RENDERED UNDER AN EMPLOYMENT OF THE INDIVIDUAL, AND NOT UNDER AN EXACTION OF SUCH EXTRAORDINARY AND LONG CONTINUED LABOR FROM THE OFFICIAL.

The provision quoted in the certificate is contained in an act entitled: "An Act making appropriations for *fortifications* and other works of *defense*, for the *armament* thereof, for the procurement of heavy *ordnance* for trial and service and for other purposes" (26 Statutes at large, 315). It was a nation's provision for heavy armanent; an exercise of the war power by and through the War Department; and the section contained in the certificate is but a minor and incidental part of its large and extraordinary provisions.

The portions of this Act quoted in the certificate are as follows:

"GUN AND MORTAR BATTERIES.—For construction of gun and mortar batteries for defence of Boston Harbor, two hundred and thirty-five thousand dollars; New York, seven hundred and twenty-six thousand dollars; San Francisco, two hundred and sixty thousand dollars.

"For the *procurement* of land or right pertaining thereto needed for the site, location, construction or prosecution of works for fortifications and coast defenses, five hundred thousand dollars or so much thereof as may be necessary, and hereafter the SECRETARY OF WAR *may cause proceedings to be instituted* in the name of the United States, in *any* court having jurisdiction of such proceedings, for the *acquirement by condemnation* of any land or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted *in accordance with the laws relating to suits for the condemnation of property* OF *the states wherein the proceedings may be instituted;* Provided, that when the owner of such land or rights pertaining thereto shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price without further delay; Provided further, that the Secretary of War is hereby authorized to accept on behalf of the United States donations of land or rights pertaining thereto, required for the above mentioned purposes.

"And provided further, that nothing herein

contained shall be construed to authorize an expenditure, or to involve the Government in any contract or contracts for the future payment of money in excess of the sums appropriated therefor."

This provision was supplement by an additional appropriation of $500,000 made by the next Congress (27 Statutes at Large, 258).

In relation to this provision I present the following considerations:

1.

As it allowed the proceeding to be instituted "in *any* Court having jurisdiction of such proceedings" and made applicable the laws of the state where the land was situated, it is obvious that the lawmaking power contemplated that the proceeding might perhaps, probably would be, taken in the *State* Courts.

In the addenda to this brief are printed two *general* and *continuing* acts relating to the condemnation of land—both passed in the same year, 1888. They were (so far as my research can ascertain) the first acts ever passed by Congress giving any authority to condemn except in special cases. One of those acts practically provided that the proceeding should be in the United States Court. The other act, *mutatis mutandis*, is the same as the provision quoted above, *which was obviously copied from it.* The fact that Congress chose this form, and rejected the one which contained the provision as to the United States Courts, would render certain the construction here claimed, if it were otherwise doubtful.

2.

It is *not* a part of the official duty of United States District Attorneys to appear or act in suits in *State* Courts in which the United States is a party or is interested.

Opinions of Attorneys General as follows:

Vol. I, p. 385, Attorney General Wirt.

Vol. II., p. 318, Attorney General Berrian.

Vol. III., pp. 45, 252, 599, Attorneys General Butler and Gilpin.

Vol. IV., pp. 294, 514, Attorneys General Nelson and Mason.

Vol. VI., p. 299, Attorney General Cushing.

Vol. X., p. 146, Attorney General Bates.

Apart from the high standing of the lawyers who gave those opinions, they have authority as the rule of action prescribed by high and competent authority.

Brown vs. U. S., 113 U. S., 565.

United States vs. Moore, 95 U. S, 760.

United States vs. Hill, 120 U. S., 169.

People vs. Adelphi Club, 149 N. Y., 14.

Especially should such an opinion have weight where it was given to state the duties of public officers *inter sese*, and apparently has been accepted and had controlling effect for a century.

At least we may say that if Congress intended that this great exercise of the war power should, in one of its initial and very important steps, impose a great and

additional labor on a very humble officer of the Department of Justice, paid by a salary and fees fixed in the last century—if Congress so intended, hardly would it have expressed that intent in language which had uniformly been given a different interpretation.

3.

The construction claimed by the Government is clearly repugnant to the earlier act of 1888; considerations which affect the construction of that act equally affect this provision.

In the case of Kohl vs. United States (91 U. S., 367), it is stated, both in the opinion of the learned Court and in the brief of counsel (pp. 369, 373), that down to the passage of the act there discussed (1872) Congress had failed to exercise the power of condemnation; and that when the exercise of that power had been necessary, it had been exercised by the States and in the State Courts.

In 96 N. Y. Reports, 227 (Matter of Petition of United States), is reported a case where condemnation was had by the United States, under the authority of *State* laws applicable to the *specific* localities and purposes stated in such laws.

It seems clear that down to 1888 the power of condemnation was exercised, in part at least, under the authority of State laws; and I believe it is certain

that Congress never passed an act which gave any power of condemnation, either *general* or *continuing*, until that year.

Hence this earlier Act of 1888 *is to be construed in view of the fact that prior to its passage,—except perhaps in some special cases not shown, all recent and all since* 1872—*no duty whatever had been imposed on District Attorneys as to condemnation.*

Practically I submit the Act of 1888 is to be construed as though this power of condemnation in the National Government had remained dormant or unused until that time, and the Act of 1888 was the first law by which it had been put in use.

The letter of the Act of 1888 harmonizes with the inferences which have been suggested from the examination of previous legislation. (See Addenda, page III.)

It is entitled as "An Act to facilitate works for the improvement of rivers and harbors." It may be invoked at places remote and various, wherever a river or a stream is to be straightened or widened, or a dumping ground obtained for river or harbor improvements.

Obviously it is an act passed to meet emergencies; it says the Secretary of War may purchase "*without delay*," or if condemnation proceedings are necessary, that he may go into *any* court. To hold that a Secretary of War could not institute those proceedings except through District Attorneys,—officers of another

department, and who might and very often would be very remote from the place where the land was situated,—would certainly cripple the power the act was intended to call into use.

4.

The other and more general act for condemning land, passed in the year 1888, expressly imposed the duties created by it on the Attorney General. (See Addenda, page IV.)

It is respectfully submitted that all this indicates that the settled and clear policy of the Government is opposed to the rule it here seeks to invoke.

5.

The Statute quoted in the certificate is complete in itself A special law complete in itself is not affected by prior general laws.

The converse—that a *special* law is not affected by a later *general* law—is too familiar to need citations of authority.

But much more should the *special* law stand distinct, when it is the later law (Matter of Murray Hill Park, 153 N. Y., 211; Matter of the City of Brooklyn, 148 N. Y., 108). The case last cited is singularly in point. There the Long Island Water Company's property had been condemned under a *special* law

The effort was to graft into that law provisions of the New York Code of Civil Procedure—a general law—which contained liberal provisions as to costs and counsel fees in condemnation cases. The Court rejected the claim because it found the *special* law was complete in itself.

> This case came before this honorable court, but upon points not related to this discussion. 166 U. S., 685.

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To bring this Statute under the yoke and harness of the Statutes cited on behalf of the Government would cripple the exercise of the power it confers.

It appropriates half a million of dollars not for land only but for its "procurement." *All* the power it confers is conferred on a single officer—on the Secretary of War.

If the position of the Government is right, the Secretary of War, whenever unable to purchase, could procure the land necessary to defend either of two great harbors in but one way, and by one man, and he in no way related to the Department of War, but a member of the Department of Justice.

> (For the provisions constituting and defining the great executive departments, see Revised Statutes 158).

Besides, he could not pay for the work, at least could not pay an amount based on the value of the service or above the allowances of the fee bill, and could not pay anything whatever if the District Attorney's official fees were already up to $6,000 a year for that year.

CLEARLY THE SECRETARY OF WAR HAD AUTHORITY TO EMPLOY ANY ONE, ANY LAWYER TO DO THAT WORK.

If that is so, though the Secretary did consult and advise with the Attorney General and select a lawyer accredited to that officer even by an official relation—the employment of Johnson was nevertheless the employment of the *individual and not the direction to the officer*.

III.

It may be, it is the fact that when these services were rendered there was no thought as to whether the service came to Johnson as an individual or as a public officer. The fact that he had been paid for a similar service the year before (top of page 3) and that it was and had been the custom and practice of the Government to pay District Attorneys for such services (folio 5) prevented any thought as to such a question, either on the part of the Secretary of War, the Attorney General, or the District Attorney. And that absence of consideration of the point now raised (apparent in the correspondence embodied in the

record below) is fairly indicated in the certificate of the Court, which uses both words "directed" and "employed" to state the transaction. Certainly under such circumstances Johnson may stand excused for not then raising a point, which would have been regarded as technical and unworthily suspicious.

But when the point is raised by the Government, adverse to what all parties then understood and considered, the defendant in error has the right to appeal to the law under which the work was done, and ask to stand or fall according to it—according to it as the Court may find it—affected or unaffected by the the various statutes cited on behalf of the Government.

SECOND PART.

In the preceding Part it has been urged that, under the provision of law quoted in the certificate, the business there contemplated of acquiring land by condemnation, being entrusted to the War Department, was altogether outside the statutes regulating the Department of Justice, and was entirely unaffected by any provisions of general law.

But if that contention fails and general laws do apply, then obviously:—

THE LAW WHICH APPLIES IS THE SECOND CONDEMNATION ACT OF 1888, AND THAT ACT IMPOSED ON THE ATTORNEY GENERAL THE DUTY OF CONDUCTING CONDEMNATION PROCEEDINGS. (Addenda p. IV.)

That is the only *general and continuing* act in relation to acquiring land by *condemnation*—except the earlier act of 1888, which applies only to River and Harbor Improvements.

If the proposition here stated is correct, this case is brought clearly within the rule stated in

United States vs. Winston, 170 U. S., 522.
United States vs. Garter, Ibid., 527.

Those cases establish that, where a duty devolved on the Attorney General is performed at his direction by a District Attorney, the service is authorized and is outside his official duty; and also that the payment therefor is not to be included or estimated in fixing his maximum.

No objection has been taken as to the form or manner of the Attorney General's certificate. In the absence of some objection or finding on that point a proper certificate will be presumed.

United States vs. Garter, *supra*.

Besides the statement in the record that the Attorney General directed the work and approved and allowed (folios 2, 4) the bill implies a proper certificate.

United States vs. Winston.
United States vs. Garter, *supra*.

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The rule invoked affects the amount earned in *examining titles* equally with the amount earned in the direct proceedings to condemn

The examination of title was necessary to the condemnation proceedings (folio 4), and so was practically a part of it.

II.

This case is not effected by the decision in Gibson vs. Peters, 150 U. S., 342, or United States vs. Smith, 158 U. S., 346. The decision in both of those cases was put upon the ground that the services there in question *were a part of the official duties of the District Attorney*, those in the Gibson case being imposed by Section 380 of the Revised Statutes and those in the Smith case being within the provisions of Section 771 of the Revised Statutes.

Indeed, the statutes there discussed aid the claim here made. From them we see that Congress, from time to time, exercising new powers and making provision for new and additional services, has sometimes devolved the rendition of such services on District Attorneys and in other cases [as here] devolved them on the Attorney General.

THIRD PART.

Section 355 of the Revised Statutes, quoted in Addenda, page I, if it applies at all, is clearly repugnant to the claim now made by the Government.

Its first two lines indicate that it relates only to land *purchased* by the Government, and it was enacted when the power of condemnation was practically an unused power.

Its mandate to District Attorneys does not relate particularly to the acquiring of land, but generally requires him to be responsive, *so far as in his power*, in relation to the titles to all public property lying in his district.

But its last lines not only negative the claim here made by the Government, but, in the absence of other authority, would have allowed the Secretary of War to employ *any one* to make the search or ascertain the title to the property in question.

FOURTH PART.

The previous custom of the Government, and the previous dealing between the parties to this suit should determine this action in favor of Johnson.

United States vs. Hill, 120 U. S., 169.

The custom stated in the record was a custom which arose out of the acts of the officers of the Government—officers of the highest rank and dignity, and of the great Department of the Treasury, with all its complicated and numerous provisions for fair and faithful audit. (Sec. 191, R. S.).

The learned Attorney General criticises the *evidence* as to custom. But he obviously does so through

inadvertance and in following the brief of the District Attorney.

The Circuit Court of Appeals has not certified any evidence, but its inquiry is predicated upon the custom, presented as a recognized fact. And it is with that large fact that the argument must deal.

The certificate not only shows the custom, but that Johnson was paid for his services of the previous year under the rule implied by the custom. Had the Government then indicated its withdrawal from such a rule, the District Attorney at least had the option to resign.

And is it not self-evident that if the services in question were worth what the certificate says they were, if the rule here claimed had been announced or in any way understood, the services could not have been obtained of defendant in error or of any one who might have been appointed to his place?

FIFTH PART.

The second question certified to this Court should be answered in the negative. That question is as follows:

> Is such compensation to be included in the fees and emoluments of claimant's office within the provisions of Sections 834, 835 and 844 of the Revised Statutes?

1.

If the view presented in the First Part is correct, then obviously this compensation is not within the purview of those sections,—the employment or direction being to the *individual and not to the officer.*

2.

If the view presented in the Second Part is correct, then the case is precisely within the rule laid down in United States vs. Garter, and United States vs Watson, which fully sustain the position of the claimant as to the maximum, and it is respectfully submitted, in effect answer this question in the negative.

3.

In the light of the decisions cited above, any further discussion of this question seems almost like trespassing on the favor of the Court. But as this case will go before the Court on submission, where some new point might be raised, or by possibility the case determined on the point as to custom stated in Part Four, claimant feels at liberty to add these further suggestions.

Section 835 is a part of the same Title as Sections 767, 770, 771 and 823. Its provision is, that a District Attorney shall not have fees for *any part* of the year beyond the rate of $6,000 per annum:—that is to say, in no month can his fees exceed $500.

Under the rule of construing together cognate and related sections, it is very clear that the fees and

emoluments there spoken of are the fees and emoluments fixed by that Title. Such fees and emoluments are of such a character that they can be tabulated or computed for every day, week, or month in the year.

Compensation for service on a *quantum meruit*, especially where dependent on the certificate of the Attorney General, which can be given only after the service is completed, could not be computed or stated for the quarterly return required by Section 833, and clearly are not of the character contemplated by Section 835.

SIXTH PART.

The third question is as follows:

> Can the Government of the United States, under the circumstances here stated, convey and apply the said sixty-five hundred dollars as such sum was conveyed and applied as aforesaid on account of the payments made by the United States as herein stated for services rendered in the year 1891?

This question, however, is not presented, if the Court finds that the compensation here in question is *not* within the provision as to the maximum, or if its answer to the first question is in the negative (fol. 8).

This question practically is as follows:—If the Court should hold with the claimant, except as to the $6,000 maximum provision, and should hold that the maximum provision affected the compensation for

services of this character—in that case could the Government, having paid the claimant beyond the maximum for services in 1891, apply the compensation otherwise due for 1892 in liquidation of the over-payment for 1891? Deeming it settled that the maximum provision does not apply, claimant does not deem it necessary to trouble the Court with any extended argument on this point.

He, however, respectfully refers to the following cases:

McKee vs. United States, 12 Court of Claims Reports, 504.

Hillborn vs. United States, 27 Court of Claims Reports, 547.

Patterson vs. United States, 28 Court of Claims Reports, 321.

The first question should be answered in the affirmative, and the second question in the negative; and an answer to the third question is not necessary.

Respectfully submitted,

JESSE JOHNSON,
Defendant in Error,
Appearing in Person.

I.

ADDENDA.

The following six sections are from the Revised Statutes:

Section 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building of any kind whatever until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the Legislature of the State in which the land or site may be, to such purchase, has been given. *The District Attorneys of the United States, upon the application of the Attorney General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney General, shall procure any additional evidence of title which he may deem necessary, and which may not be in possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.*

Section 770. The District Attorney for the Southern District of New York is entitled to receive

quarterly for all his services a salary at the rate of $6,000 a year. For extra services the District Attorney for the District of California is entitled to receive a salary at the rate of $500 a year, and the District Attorneys for all other districts at the rate of $200 a year.

Section 771. It shall be the duty of every District Attorney to prosecute *in his district* all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending *in his district* against collectors, or other officers of the revenue, for any act done by them or for the recovery of any money exacted by or paid to such officers and by them paid into the Treasury.

Section 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to District Attorneys, clerks of the Circuit and District courts, marshals, commissioners, witnesses, jurors and printers in the several States and Territories, except in cases otherwise expressly provided by law.

Section 1764.—No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no

allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Section 1765.—No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulation, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

No civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States, beyond his salary or compensation allowed by law; provided that this shall not be construed to prevent the employment and payment by the Department of Justice of District Attorneys as now allowed by law for the performance of services not covered by their salary or fees. (Section 3 of the Act of June 20, 1874, 18 Statues, 131).

Chap. 194.—An Act to facilitate the prosecution of works projected for the improvement of rivers and harbors.

Be it enacted by the Senate and House of Repre-

sentatives of the United States of America in Congress assembled, That the SECRETARY OF WAR may *cause* proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted *in accordance with the laws relating to suits for the condemnation of property in the States wherein the proceedings may be instituted;* Provided, however, that when the owner of such land, right of way or material, shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price *without further delay;* And provided further, that the Secretary of War is hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works.

Approved April 24, 1888. (25 Statutes at Large, 94).

Chap. 728.—An Act to authorize condemnation of land for sites of public buildings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in every case in which the Secretary of the Treasury, *or any other officer* of the

V.

Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building *or for other public uses*, he shall be, and hereby is, authorized to acquire the same for the United States by condemnation under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States Circuit or District courts of the district wherein such real estate is located shall have jurisdiction of proceedings for such condemnation, *and it shall be the duty of the Attorney General of the United States*, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.

Sec. 2. The practice, pleadings, forms and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such Circuit or District courts are held, any rule of the court to the contrary notwithstanding.

Approved, August 1, 1888. (25 Stat. 357.)